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Attorneys for Adknowledge, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

XMISSION, L.C., a Utah company,
Plaintiff,

v.

ADKNOWLEDGE, INC. a Missouri
Corporation; DOES 1-40,
Defendants.

DECLARATION OF MATT HOGGATT

Case No. 2:15-cv-00277 TC

Judge Tena Campbell

I, Matt Hoggatt, having personal knowledge of the matters asserted herein, do hereby
declare as follows:

1. I am the General Manager of Adknowledge's email business overseeing the List Management, API, and Partner Network solutions.

2. Adknowledge, Inc. connects advertisers with the appropriate audience, in the right place and at the right time. As one of the largest privately held digital marketplaces, Adknowledge's database of over 600 million people allows prediction of online preferences and behavior, which Adknowledge converts into brand messages delivered through various channels: video delivery, social media, App and Game installs, email, and content recommendation.

3. Adknowledge was founded in 2004 and is headquartered in Kansas City, Missouri. It employs approximately 300 people in offices around the world, including Kansas City, New York, Los Angeles, Fort Myers, Toronto, London, and São Paulo.

4. Adknowledge's approach to advertising is shaped by its engineering and data-led methodology, and by 10+ years of experience working closely with high-performance advertisers in electronic commerce, lead generation and social gaming.

5. Adknowledge runs media campaigns in the fastest-growing, highest-volume, most complex areas of digital advertising, including video advertising via YouTube, native video, Facebook and Twitter; mobile app distribution; social media advertising; and email and audience development.

6. Adknowledge employs sophisticated behavioral, contextual and demographic targeting algorithms to reach an audience of nearly two billion people in about 50 countries.

7. Adknowledge works with over half of the Fortune 500 advertisers in the world, including L'Oreal, Range Rover, LG, Samsung, Volkswagen, Amazon.com and Kellogg's. Adknowledge retains 92% of its customers annually.

8. Adknowledge offers an industry-standard digital video solution, delivering three to four times more earned media and nearly 100% better results on YouTube than its competitors. Adknowledge's video service, Giant Media, helps clients distribute branded videos

to the right targets across any digital screen or device. Giant Media is the #1 native video and video seeding platform, according to comScore. Adknowledge's advanced targeting generates ads with 30-50% more clicks and engagement than typical YouTube ads.

9. Adknowledge's AdParlor social advertising platform offers managed services as well as a simple, easy to use self-service platform that allows clients to manage social media campaigns from a single login. Adknowledge is one of a handful of companies recognized by major social media platforms as a preferred development and marketing partner.

10. Adknowledge's mobile app solution provides exclusive distribution channels and a vast partner network. Adknowledge distributes millions of apps each month across all platforms: mobile, tablet, social, desktop and browser. Adknowledge's non-incentivized CPI (cost per impression) pricing ensures advertisers only pay for installs by people who actually want an app, not meaningless clicks or impressions. Adknowledge is able to target the best potential users based on a variety of criteria, including device, carrier, connection type (Wi-Fi vs. LTE), interest, demographic, country, and even city.

11. Adknowledge's audience development product, AdBistro, helps publishers to drive visits, engagement and revenue in a verifiable way. AdBistro brings together relevant content from coveted advertisers with widely read publishers from across the globe. Its targeted system has multiple delivery tools to get the traffic advertisers need.

12. Adknowledge's YARPP recommendation engine delivers the traffic advertisers need by displaying a collection of related, relevant recommendations on a well-matched site, based on a unique algorithm that matches reader to content. And Adknowledge's proprietary AdVerify has 60 filters to combat malicious activity and ensure quality traffic. Using multiple points of security, AdVerify uses countermeasures at three levels, including partnerships with Integral Ad Science and FraudLogix.

13. Adknowledge's email solution, driven by analytics, allows advertisers to find new customers in a safe, monitored, and compliant environment.

14. In online advertising, a "publisher" is the owner of some distribution mechanism with direct relationships with its users. Examples of publishers include online merchants, personal websites, social network websites, app/game developers, list owners—basically anyone with an on-line avenue for reaching the attention of people. Publishers earn money from their content by delivering ads to users and get paid by advertising networks.

15. For purposes of online advertising, an "advertiser" is the party seeking to advertise its services or products. Although some publishers may also be advertisers (an online store selling products is often both), this is not always the case. Advertisers rely on relationships with marketing networks to funnel ads through publishers to users.

16. Adknowledge is functionally a "marketing network" and maintains relationships with innumerable advertisers and publishers. Adknowledge uses the vast data and complex analytics it has developed to efficiently connect the right advertisers to the right publishers, so ads can be directed to the most suitable customers. Advertisers pay Adknowledge for access to its data and publisher network.

17. Adknowledge's email business pays publishers a commission when the publishers' users click on Adknowledge "redirect links" resulting in clicks, page views, or purchases for advertisers, for which Adknowledge itself is paid.

18. For our List Management and API products, Adknowledge pays only a few highly select, high-quality publishers directly for sending email. Based on the information we gathered ourselves, none of those publishers sent the emails that XMission complains of. Adknowledge otherwise pays publishers only for clicks, not for sending emails..

19. For Adknowledge's publishers, Adknowledge is not the legislative sender, thus Adknowledge has no knowledge, rights, or control over to whom or even if publishers send

email. Just to be clear, because Adknowledge's network requires encrypted IDs representing email addresses, Adknowledge has no specific knowledge of where and to whom its publishers deliver email. Like other large online advertising companies—including Google and Yahoo—Adknowledge has no direct relationship with its publishers' users, relying instead on publishers to curate their own relationships with their own users and customers.

20. All Adknowledge publishers are required to represent and warrant to Adknowledge that their activities comply with all applicable federal and state laws and regulations, including specifically the CAN-SPAM act.

21. Adknowledge takes compliance seriously, as described in the Declaration of John Herbst.

22. Because XMission has yet to provide any evidence to Adknowledge, we have proactively examined our internal records based on broad assumptions of the domains that XMission operates. From this research I determined that all known emails were sent by publishers of Adknowledge, and therefore none were sent directly by Adknowledge.

23. The relevant publishers use our "API" product for advertising. Opens and clicks redirect through Adknowledge for reporting and tracking purposes, not because Adknowledge initiated or procured transmission of the emails.

24. If any Adknowledge publisher sent emails to XMission in violation of law, Adknowledge would take corrective action in the regular course of business. Just to be clear, if any publisher is found to be in violation of the law, Adknowledge has and will take corrective action and be subject to termination from Adknowledge's network.

25. I viewed and captured XMission's press release dated January 30, 2015 announcing its intent to "take legal action" against spammers. A true and correct copy of this press release is attached as Exhibit A.

26. Adknowledge is not the sender of commercial email and cannot directly control where its publishers direct email. Absent information about all XMission user email addresses, the only way Adknowledge could ensure compliance with XMission's TRO would be to shut down its entire email business.

27. Shutting down its email business would cost Adknowledge considerable money and cause incalculable long-term harm. Advertisers and publishers would seek alternatives for their email marketing needs and Adknowledge's reputation would be damaged irreparably. Adknowledge would likely be forced to terminate employees involved with email marketing and potentially in its other business channels.

EXECUTED this 4th day of May, 2015.

/s/ Matt Hoggatt
Matt Hoggatt

(* I certify that I have the signed original of this document which is available for inspection during normal business hours by the Court or a party to this action.

*Declaration electronically signed, pursuant to U.C.A. § 46-4-201(4) and District Of Utah CM/ECF and E-filing)